

REMARKS**A. INTRODUCTION**

Claims 1-49, 61-63, 67-83 and 88-96 are pending and rejected.

Upon entry of this Amendment:

- Claims 1-49, 61-63 and 88-99 will be pending
- Claims 4, 9, 18 and 19 will be amended
- Claims 97-99 will be added
- Claims 67-83 will be cancelled without prejudice
- Claims 1, 61, 62, 63, 88, 95 and 96 will be the only independent claims

B. SECTION 103(A) REJECTIONS

Claims 1-3, 5-7, 13, 14, 20-22, 24-26, 31, 61-63, 88, 91 and 93-96 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Atkinson (U.S. Patent Publication No. 20080162330), and further in view of Minh (U.S. Patent No. 5,076,588).

Claims 8, 10-12, 15, 16, 17, 23, 28-30, 37-39, 41, 42, 89 and 92 stand rejected as being unpatentable over Atkinson (U.S. Patent Publication No. 20080162330), in view of Minh (U.S. Patent No. 5,076,588) and further in view of Walker '639 (U.S. Patent No. 6,108,639).

Claim 46 stands rejected as being unpatentable over Atkinson (U.S. Patent Publication No. 20080162330), in view of Minh (U.S. Patent No. 5,076,588) and Walker '639 (U.S. Patent No. 6,108,639) and further in view of Franchi (U.S. Patent No. 5,770,533).

Claim 47 stands rejected as being unpatentable over Atkinson (U.S. Patent Publication No. 20080162330), in view of Minh (U.S. Patent No. 5,076,588) and Walker '639 (U.S. Patent No. 6,108,639) and further in view of Franchi (U.S. Patent No. 5,770,533 and Fisher (U.S. Patent No. 6,243,691).

Claims 32 and 33 stand rejected as being unpatentable over Atkinson (U.S. Patent Publication No. 20080162330), in view of Minh (U.S. Patent No. 5,076,588) and Walker '639 (U.S. Patent No. 6,108,639) and further in view of Scholdorf (EP 0 411 748 A2).

Claim 43 stands rejected as being unpatentable over Atkinson (U.S. Patent Publication No. 20080162330), in view of Minh (U.S. Patent No. 5,076,588) and

Walker '639 (U.S. Patent No. 6,108,639) and further in view of Franchi (U.S. Patent No. 5,770,533) and further in view of Baraldi "Efficient parallel algorithms for the minimum cash flow program", Journal of Optimization Theory and Applications (Dec. 1997) p. 501-30.

Claims 44 and 45 stand rejected as being unpatentable over Atkinson (U.S. Patent Publication No. 20080162330), in view of Minh (U.S. Patent No. 5,076,588) and Walker '639 (U.S. Patent No. 6,108,639) and further in view of Franchi (U.S. Patent No. 5,770,533) and further in view of Warren Publishing "Budget Leaves Out Spectrum Fee", Television Digest (13 Feb. 1995), Vol. 35, No. 7.

Claims 4, 9, 18 and 19 stand rejected as being unpatentable over Atkinson (U.S. Patent Publication No. 20080162330), in view of Minh (U.S. Patent No. 5,076,588) and Walker '639 (U.S. Patent No. 6,108,639) and further in view of Franchi (U.S. Patent No. 5,770,533) and Walker '778 (U.S. Patent No. 6,049,778).

Applicants respectfully traverse the rejection of Claims 4, 9, 18 and 19 for at least the reasons provided herein with respect to independent Claim 1. In addition, Applicants respectfully submit that Walker '778 should be removed as a reference per Section 103(c). Walker '778 appears to qualify only as a Section 102(e) reference. At the time of invention of the subject matter described in this Application, both Walker '778 and the present Application were assigned or were under obligation of assignment to the same entity. Accordingly, Applicants respectfully request withdrawal of the Section 103(a) rejection of Claims 4, 9, 18 and 19. Each of Claims 4, 9, 18 and 19 has been rewritten as an independent claim, incorporating explicitly what was previously incorporated by reference. The scope of the claims has not changed.

Claims 27, 34, 35, 36 and 48 stand rejected as being unpatentable over Atkinson (U.S. Patent Publication No. 20080162330), in view of Minh (U.S. Patent No. 5,076,588) and Walker '639 (U.S. Patent No. 6,108,639) and further in view of Franchi (U.S. Patent No. 5,770,533) and Barzilia (U.S. Patent No. 6,012,045).

Claims 67-83 stand rejected as being unpatentable over Atkinson (U.S. Patent Publication No. 20080162330), in view of Minh (U.S. Patent No. 5,076,588) and Walker '639 (U.S. Patent No. 6,108,639) and further in view of Franchi (U.S. Patent No. 5,770,533) and Kou (U.S. Patent No. 6,363,365).

Claim 90 stands rejected as being unpatentable over Atkinson (U.S. Patent Publication No. 20080162330), in view of Minh (U.S. Patent No. 5,076,588) and Walker '639 (U.S. Patent No. 6,108,639) and further in view of Franchi (U.S. Patent No. 5,770,533) and Pionchon (U.S. Patent No. 5,200,890).

Applicants respectfully traverse the Section 103(a) rejections of all of the pending independent claims (Claims 1, 61, 62, 63, 88, 95 and 96) and their dependent claims. Contrary to what is asserted in the Office Action, Atkinson does not teach or suggest features generally directed to determining whether a bidder is qualified to receive a reward other than a product that is subject to bidding during an auction session. The portions of Atkinson cited in support of the finding that such a feature was known [0045, 0036] does not support the finding. In the supplier or reverse auctions described in the cited portions, the contract to supply particular items is the subject of the auction and therefore is the product being bid on—it is not *other than the product*. With respect to the “final qualification” process noted in the Office Action, which contrary to what is alleged does not describe a process of determining a reward, but is clearly part of the auction process to determine a winner of the bidding on the contract itself. Accordingly, the qualification process does not teach or suggest a reward other than a product that is the subject of the auction. and thus does not teach or suggest any type of reward other than what is subject to bidding.

The Office Action also appears to suggest that [0069, lines 1-24] of Atkinson teach generally indicating a bidder has qualified for reward other than for a product subject to bidding in an auction. Applicants respectfully traverse and submit that the cited description of a rule “conditioning the inclusion of a bidder 30 in a subsequent auction round on that bidder 30 having not been awarded a contract in a proceeding round,” does not suggest an indication of any reward other than the contract that was the subject of bidding. Applicants also submit that the statement in the Office Action that “the bidder 30 that is awarded a contract in the first auction round has a choice whether to or not participate in the second auction round” is not supported by the cited portion of Atkinson, which clearly is directed to excluding a bidder awarded a contract in a first round (“a rule conditioning the inclusion of a bidder...”) from any subsequent round. Atkinson describes that whether such a rule is imposed is at the discretion of the sponsor 10, not that a winning bidder 30 may choose to participate or not where such a rule is in force—such a bidder could not participate per the rule.

For at least these reasons, Applicants respectfully submit that no prima facie case of obviousness has been established for any of the pending claims, as the Office Action relies upon the cited portions of Atkinson as allegedly teaching the claimed subject matter. Applicants respectfully request reconsideration and withdrawal of the Section 103(a) rejections of the pending claims.

Further with respect to Claims 3, 13, 14 and 22, the Office Action here relies on aspects of two different types of auctions, without explaining how it would have been obvious to combine the asserted awarding of a contract to a low bidder in a

supplier or reverse auction, with the highest winning bid model of a forward auction. Applicants submit that if the Office Action relies on the awarded contract as the alleged *reward*, that it would not be obvious in Atkinson to base the reward on a highest bidders, as low bidders, according to Atkinson, win supplier contracts. For at least these reasons, Applicants request reconsideration of the Section 103(a) rejection of Claims 3, 13, 14 and 22.

Further with respect to Claims 5-10, Applicants respectfully submit that Atkinson does not teach or suggest wherein the reward comprises a condition that the bidder accept an offer provided by a third party. The Office Action implies that the sponsor is a “third party” because it is a supplier or seller. Again, the reliance on aspects of both supplier auctions (for the alleged reward) and forward auctions (for the alleged third party offer) is illogical. Further, if the sponsor is making an offer of goods or services being sold to bidders, as stated in the Office Action, then sponsor is not a third party. A third party is not a principal to a transaction—the sponsor and the bidders are the principals of the auction transaction. Various embodiments described in the Specification provide for an offer from a third party that is not a principal to the auction transaction, and determining whether a bidder qualifies for a reward based on whether the bidder accepts an offer provided by such a third party. For at least these reasons, Applicants respectfully submit that no prima facie case of obviousness has been established for any of claims 5-10. Applicants respectfully request reconsideration and withdrawal of the Section 103(a) rejections of Claims 5-10.

For at least the reasons stated in this paper, Applicants respectfully request reconsideration and withdrawal of all of the Section 103(a) rejections.

C. ADDITIONAL COMMENTS

Our silence with respect to the Examiner’s other various assertions not explicitly addressed in this paper, including assertions of what the cited reference(s) teach or suggest, the Examiner’s interpretation of claimed subject matter or the Specification, or the propriety of any asserted combination(s) of teachings, is not to be understood as agreement with the Examiner. As the Examiner has not established an un rebuttable prima facie case for rejecting any of the claims as pending, for at least the reasons stated in this paper, we need not address all of the Examiner’s assertions at this time. Also, the absence of arguments for patentability other than those presented in this paper should not be construed as either a disclaimer of such arguments or as an indication that such arguments are not believed to be meritorious.

D. NEWLY-ADDED CLAIMS 97-99 ARE PATENTABLE OVER THE CITED REFERENCES

Newly-added dependent Claims 97-99 are patentable over the cited references for at least the reasons presented herein with respect to their respective base claims.

For at least the reasons stated herein, we respectfully submit that new Claims 97-99 contain allowable subject matter.

E. PETITION FOR EXTENSION OF TIME TO RESPOND & AUTHORIZATION TO CHARGE APPROPRIATE FEES

We do not believe that any fees are necessary for this response.

Please grant a petition for any extension of time required to make this Response timely. Please also charge any other appropriate fees set forth in 37 C.F.R. §§ 1.16 – 1.18 for this paper and for any accompanying papers to:

Deposit Account: 50-0271

Order No.: 98-084

Please credit any overpayment to the same account.

F. CONCLUSION

It is submitted that all of the claims are in condition for allowance. The Examiner's consideration is respectfully requested.

If the Examiner has any questions regarding this paper or the present application, the Examiner is cordially requested to contact Michael Downs at telephone number (203) 438-6408 or via electronic mail at mdowns@finchamdowns.com.

Respectfully submitted,

September 17, 2009
Date

/Michael Downs 50252/
Michael Downs
Attorney for Applicants
Registration No. 50,252
mdowns@finchamdowns.com
(203) 438-6408 /voice
(203) 438-6991 /fax